EX PARTE OR LATE FILED

#### ALSH, L. L. P.

ORIGINAL

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION 1400 SIXTEENTH STREET, N. W. WASHINGTON, D. C. 20036
TEL (202) 939-7900 FAX (202) 745-0916

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C. CHARLES S. WALSH ARTHUR H. HARDING ARTHUR H. HARDING
STUART F. FELDSTEIN
JEFFRY L. HARDIN
STEPHEN A. BOUCHARD
R. BRUCE BECKNER
CHRISTOPHER G. WOOD
SETH A. DAVIDSON
JAMES F. MORIARTY
MATTHEW D. EMMER
HOWARD A. TOPEL
LOUIS H. DUPART\*
SHARON O'MALLEY MONAHAN\*\*
LAWRENCE R. FREEDMAN
ERIC E. BREISACH\*\* ERIC E. BREISACH\*\*

JUN = 2 2000

JUN = 2000

JU RICHARD L. DAVIS S. JENELL TRIGG JENNIFER B. TOMCHIN SHARI L. WILKOZEK ++ LISA CHANDLER CORDELL SUSAN LYNCH JORDAN +++

VA BAR ONLY
MA BAR ONLY
\*MI BAR ONLY
MD BAR ONLY
IL BAR ONLY
+MD, NY AND CT BAR ONLY

June 2, 2000

via Hand Delivery

Magalie Roman Salas, Secretary Office of The Secretary Office of Managing Director Federal Communications Commission 445 Twelfth Street, SW, TW-A325 Washington, DC 20554

Re:

Ex Parte Presentation of Bachow/Coastel,

L.L.C., WT Docket No. 97-112/CC Docket No. 90-6

Dear Ms. Salas:

Bachow/Coastel, L.L.C. ("Bachow/Coastel"), pursuant to section 1.1206(b)(2) of the Commission's rules. 1 and by its attorneys, herewith files with the Commission an original and one copy of its summary of its ex parte presentation at the Commission on Thursday, June 1, 2000, and the paper handout from that meeting. On that date, Bachow/Coastel Managing Director Jay D. Seid, Esq. and its Vice President of Operations, Robert Ivanoff, along with Bachow/Coastel's counsel, Louis H. Dupart, Esq. and Steven J. Hamrick, Esq. of Fleischman and Walsh, L.L.P., met with Thomas J. Sugrue, Bureau Chief, James D. Schlichting, Deputy Chief, and Michael A. Ferrante, Esq. of the Wireless Telecommunications Bureau. Bachow/Coastel is filing two additional copies of this summary with the Commission due to the second docket number attached to this proceeding.

In this meeting, Bachow/Coastel stated that the primary reason for the Commission's proposed rules in its Second Further Notice of Proposed Rulemaking ("Second FNPRM"), which

No. of Copies rec'd 01 List A B C D E

47 C.F.R. § 1.1206(b).

Magalie Roman Salas June 2, 2000 Page -2-

is to provide reliable cellular service in the coastal areas of the Gulf of Mexico,<sup>2</sup> is no longer at issue, because licensees currently provide reliable cellular service in those geographic areas. The Commission's current rules provide for reliable cellular service in the area recognized in the Second FNPRM as the "Coastal Zone," and for Special Temporary Authorizations and Interim Operating Authorizations to address temporary service deficiencies. As there is no significant issue for resolution, the Commission should terminate this rulemaking proceeding.

The Second FNPRM's proposed rules raise serious legal concerns for the Gulf-based carriers. The United States Court of Appeals for the District of Columbia Circuit's remand decision<sup>3</sup> required the Commission to address the Gulf-based carriers' unique operating characteristics, but the Second FNPRM does not do so. The Second FNPRM's proposed rules favor the land-based carriers.

Bachow/Coastel recognizes that the situation concerning Florida's Gulf coast is a unique situation. Bachow/Coastel proposes that the Commission grant Interim Operating Authority to land-based carriers to achieve reliable coverage along Florida's west coast. The Commission's current rules provide for the solution to any service issue along the Gulf coast.

If you have any questions concerning this filing, or if you require additional information, please do not hesitate to call.

Cordially,

Steven J. Hamrick

Counsel to Bachow/Coastel, L.L.C.

Attach.

See Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, 65 Fed. Reg. 24168-24169 (April 25, 2000).

<sup>&</sup>lt;sup>3</sup> See Petroleum Communications, Inc. v. Federal Communications Commission, 22 F.3d 1164 (D.C. Cir. 1994).



(WT Docket No. 97-112)

June 1, 2000

Bachow/Coastel, LLC

# Review of the History of Proposed Rulemakings

Timetable

d Area Rulemaking for the

G of Mexico Air reuit Court of Appeals

ion May 1994

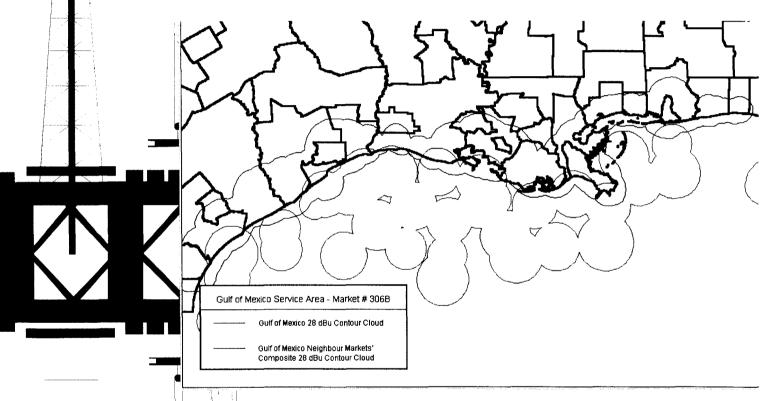
Proposed Rulemaking March 1997

Proposed Rulemaking April 2000

• The underlying premise for the proposed rulemaking has resolved itself over the past 7 years.

January 1993

## Current rules provide reliable service in the Coastal Zone



- Gulf Carriers have "no control" over land based 28 dBu contours
- Interference problems exist to the Gulf Carriers in the overlap area

# Contrary to the rulemaking's upfront conclusion...

The public <u>is</u> currently receiving reliable <u>servior</u> in coastal areas

Gulf carriers have economic incentive to ide quality service in high traffic areas to benefit to warehouse spectrum

Coastel has nearly doubled the number of sites in 3 years

- a 3 A-band land based carriers have implemented land based co-location systems
- If there is no significant issue, why have rulemaking for rulemaking's sake?

## There are more efficient methods to address this issue

- This is not an industry-wide issue
- Only 6 land based carriers bothered to the land based carriers bothered to
  - The urrent rules provide
    - tunities to address temporary
  - service deficiencies
    - STA (Special Temporary Authorizations)
    - IOA (Interim Operating Authority)

# The proposed rules raise serious legal concerns to the Gulf Carriers

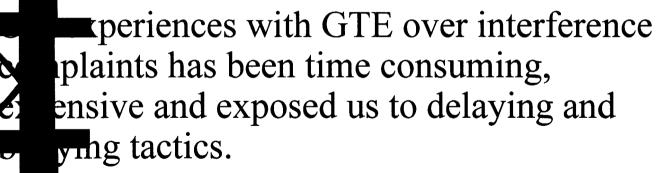
• The proposed rules do not address the court remaind

rence problem faced by the Gulf

An ended rulemaking processes will likely result in the same parties seeking court intervention and is a waste of resources

### Remand required rulemaking to address Gulf Carriers' issues, but proposed rulemaking does not

• Gulf Carriers must continuously deal with Interference from land carriers



• Effectively, if a Gulf Carrier loses a platform (or a lease) it automatically is stripped of coverage area

Remand required rulemaking to address Gulf Carriers' issues, but proposed rulemaking does not

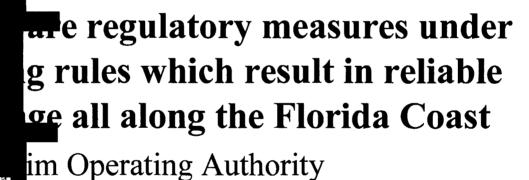
• SAB contour formulae rules benefit <u>the</u> and carriers

> rence in received antenna height rent SAB rules produce unequal al at the border

• The proposed rules do not solve the inequity, but actually perpetuate the inequity into the Exclusive Zone

# The Florida Coast is a unique situation

- There are no oil/gas platforms off the Florida
  - Coa ... Presidential proclamation



• Florida Coast only involves a total of 5 carriers

#### **Recommended Action**

- Utilize the existing Rules
  - Interm Operating Authority for the was coast of Florida
  - Rote an industry working group to recommend alternative solutions to the temporary loss of platforms